

FW Comments on July 1 2005 NOI

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From: Robert Cleaves [mailto:recleaves@yahoo.com]

Sent: Thursday, August 11, 2005 9:31 AM

To: Howard (ENE) Bernstein

Subject: Comments on July 1, 2005 NOI

Dear Howard:

On behalf of Barnstead Power & Light, LLC ("BPL"), I wanted to take this opportunity to briefly comment on the Department's proposed changes to the Massachusetts RPS, as set forth in the NOI.

Other parties have adequately addressed issues relating to changes in the definition of "advanced combustion" and "low emission." BPL has nothing more to add to that debate.

We wish to comment, however, on a proposed change to the rules which would give retrofitted plants no greater than 3 years of REC credits. There are numerous legal and policy concerns with this approach, including whether the Department has the statutory authority to make such a change. Regardless, the change is premised on the notion that limiting the duration of the credits provides a level playing field and that the RPS shouldn't provide greater incentives to existing plants than "new" facilities. While admirable, this approach fails to appreciate the challenges facing developers who take plants that shut down many years ago and make major new investments, essentially creating a "new" facility with some old equipment.

If the Department decides to impose the 3 year limit (we hope it doesn't), they should clearly delineate what is "existing" and what is "new." For example, BPL intends to take an existing facility that has not run for over a decade, completely refurbish the facility, and bring it back online. The facility will be "new" for the purpose of Section 45 tax credits, since the IRS has ruled, in a private letter ruling, that if 80% of the fair market value of a facility derives from new equipment, then the facility is considered "new" for Section 45 purposes. This same definition of "new" is adopted by Green-e, See Green-e Renewable Electricity Certification Program at 5.

Also, we note that the Department has suggested different standards for different sized generation units. We would like the Department to establish that if a Biomass facility has more than one generating unit on the same premises, each unit will be considered separately for the purpose of heat rates and emissions, if in fact those criteria are adopted by the Department.

Thank you for your consideration of these comments.

Bob Cleaves

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